* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

15

Date of Decision: February 08, 2006

\+ **LPA 648/2004**

INDIAN AIRLINES LTD. **..Appellant**
Through Mr.Lalit Bhasin, Sr.Advocate with Ms.Ratna Dwivedi Dhingra and Ms.Chaya Budhiraja, Advocates.

versus

UOI AND ORS. **....Respondents**
Through Mr. Jaideep Gupta, Sr.Advocate with Mr.Raja Chatterji, Advocate.
Mr.Sanjay Kary, Advocate.
Mr.Rajesh Tyagi, Advocate for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

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For orders see the file of LPA 646/2004.

M. Katju
CHIEF JUSTICE

Madan Lokur
MADAN B. LOKUR, J

FEBRUARY 08, 2006
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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA No. 646-649/2004 and LPA 382/99

Date of Decision : February 6, 2006

INDIAN AIRLINES LTD.

..... **Appellant**

Through: Mr.Lalit Bhasin, Senior, Advocate with Ms.Ratna Dwivedi Dhingra and Ms.Chaya Budhiraja, Advocates.

Versus

UOI & ANR.

..... **Respondents**

Through: Mr.Jaideep Gupta, Sr.Advocate with Mr.Raja Chatterji, Advocate.
Mr.Sanjay Kary, Advocate.
Mr.Rajesh Tyagi, Advocate for R-3.

CORAM

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

✓1. Whether the reporters of local papers may be allowed to see the judgment?

✓2. To be referred to the Reporter or not?

✓3. Whether the judgment should be reported in the Digest?

MARKANDEYA KATJU, C.J.

1. These writ appeals arise out of the common judgment of the learned Single Judge dated 21.5.2004 in four writ petitions, three filed by employees working under the Indian Airlines since beginning of their service, and one filed by the employees working under Vayudoot Limited which has been since taken over by Indian Airlines.

2. The facts in detail have been set out in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

3. The facts of the case are that Vayudoot Limited was incorporated as a private limited company in the year 1981. It was converted into a public limited company in the year 1983 with shares jointly owned by Indian Airlines and Air India. On account of mounting losses and outstanding liabilities it was decided by the Government of India to merge Vayudoot Limited with Indian Airlines by its letter dated 25.5.93 addressed to Indian Airlines, Air India, Vayudoot Limited, International Airports Authority of India and the National Airports Authority of India.

4. It was also decided by letters of the Ministry of Civil Aviation and Tourism dated 22.11.93 and 24.5.94 to absorb the Vayudoot Ltd. employees in Air India, Indian Airlines, National Airports Authority of India, PHHL, IGRUA and HCI.

5. In the letter dated 24.5.94 the Ministry of Civil Aviation and Tourism, Government of India it was clearly stated that the following relaxation/benefits will be given to the Vayudoot Ltd. employees on joining the new organizations :-

    1. Protection of basic pay.
    2. Probation period and medical examination will be waived.
    3. Appointment will be subject to three years' satisfactory record of service.

4. Leave balance of the employees will be transferred to the new organization.

6. Service rendered in Vayudoot will be reckoned for the purpose of gratuity, Providend Fund, loans and advances, medical facilities and SOL passages.

7. Subsequently, the Ministry of Civil Aviation by order dated 24.5.94 constituted a committee to oversee the absorption process of Vayudoot employees. The members of the Committee have been mentioned in paragraph 10 of the impugned judgment of the learned Single Judge.

8. On the same date i.e., 24.5.94 another circular was issued creating a separate Department under the Indian Airlines called "Short Haul Operations Department" (SHOD). This order has been quoted in paragraph 11 of the impugned judgment and hence we are not repeating the same.

9. The employees of Vayudoot Ltd. absorbed in Indian Airlines in the separately created department called SHOD started claiming right to be integrated with the existing employees of Indian Airlines. They claimed the right to be promoted to the next higher post. They also claimed that while integrating their service on the corresponding posts with the existing employees of Indian Airlines, length of service rendered by them under Vayudoot Ltd. be reckoned. This was opposed by the existing employees of Indian Airlines on the ground that there were recruitment rules governing appointment and promotion under Indian Airlines, whereas

under Vayudoot Ltd. there were no such notified recruitment rules and promotions were being effected on ad-hoc basis. This had resulted in employees of Vayudoot Ltd. being granted accelerated promotions. For instance, the employee of Vayudoot Ltd. who was inducted to post A earned promotion to a post B, and further promotion to the next higher post C in say, seven years. A corresponding employee of Indian Airlines appointed to the corresponding post A earned no promotion or at best earned promotion to the corresponding post B. Hence, integration as prayed for by the employees of Vayudoot Ltd. would be unjust to the existing employees of Indian Airlines.

10. It appears that subsequently negotiations were held for sorting out the differences and at a meeting held on 10.3.98 certain points were noted, as stated in paragraph 17 of the impugned judgment. Based on the said minutes on 21.4.98, Indian Airlines issued a notification stating that the criteria to be followed after merger of inter se seniority between SHOD employees of non-technical categories and Indian Airlines non-technical categories of employees up to the grade 9 will be that SHOD employees will be placed at the bottom of the seniority of each respective pay scale/Department as on 10.3.98. Other points were also mentioned therein, but we are not going into the same here.

11. Thereafter, it seems a meeting was convened on 23.4.98 which was attended by various officials of the Ministry of

Civil Aviation, Indian Airlines, technicians, general category Officers, general category staff and others to discuss the issues relating to the demands of the employees of Short Haul Operation Department (SHOD). The minutes of the meeting have been quoted in extenso in paragraph 20 of the impugned judgment and hence we are not repeating the same here.

12. It may be noted on perusal of the same that a final decision could not be reached regarding seniority, promotion etc. As regards the meeting held on 10.3.98 in which it was decided that the general category staff will be placed at the bottom of each grade in their respective department as on 10.3.98, it was stated in the said minutes of 23.4.98 that no representative of this category was present in the last meeting and they have now stated that the cut off date i.e. 10.3.98 was not suitable to them as it will result in long delay in their promotion. They, therefore, desired to continue in SHOD with proper career progression.

13. While the negotiations were going on and some of the issues had been finally resolved, vacancies arose to the post of Manager (Commercial) in Indian Airlines, whose feeder post was the post of Deputy Manager (Commercial). The Deputy Managers (Commercial) under Vayudoot Ltd. who were absorbed as Deputy Manager (Commercial) in the SHOD of Indian Airlines filed WP(C) 723/98 and WP(C) 931/98. Their main grievance was that Indian Airlines was

acting illegally in only considering the Deputy Manager (Commercial) working in the Indian Airlines for the purpose of promotion to the post of Manager (Commercial). It was alleged in this petition that the petitioners have been denied their right for promotion to the post of Manager (Commercial) merely because a new Department known as SHOD has been created by the respondent arbitrarily, although, the petitioners have been discharging their duties in different Departments in Indian Airlines under the term "secondment". It was alleged that SHOD has been created merely to deprive the petitioners of their right to have further promotion like their colleagues in other Departments of Indian Airlines, though this Department is not carrying on commercial or any other type of activities and it is almost a non est Department. It was alleged that the only function of this Department is to issue salary cheques to the petitioners and other persons who have been absorbed in Indian Airlines after the merger of Vayudoot in Indian Airlines. It was alleged that at the time of merger of Vayudoot in Indian Airlines the Government of India, Ministry of Civil Aviation had given a solemn undertaking and assurance through various letters as well as absorption letters issued to the petitioners that the services rendered by them in Vayudoot shall be reckoned for all purposes including for the purpose of their further promotion in higher scales or grade. However, it is alleged that respondents are going back from

their assurance. It was submitted that the principle of promissory estoppel applies and respondents cannot be allowed to back out from the undertaking/assurance.

14. In the counter affidavit to the writ petition, the Indian Airlines and Union of India stated that the instructions of the Ministry of Civil Aviation, the circular of Vayudoot and the offer of absorption from the SHOD clearly provided for the following:-

(1) Vayudoot would be retained as a clearly identifiable separate division of Indian Airlines called the 'Short Haul Operations Department'.

(2) The services rendered in Vayudoot would be reckoned only for the purpose of gratuity, providend fund, loans and advances, medical facilities and SOL passages, protection of basic pay and transfer of leave balance was also provided.

(3) The seniority of Vayudoot employees absorbed in the SHOD of Indian Airlines was to be maintained separately in the SHOD.

(4) Absorbed employees were not to be transferred to any Department of Indian Airlines Limited and they were required to

work in any station where the SHOD was to operate. However, Indian Airlines could utilize their services in other Departments for a limited period due to exigencies of work.

15. The offer of appointment clearly stipulated for the maintenance of separate seniority distinct from the mainstream employees of Indian Airlines. The employees of Vayudoot Limited who were absorbed/appointed in the Indian Airlines have been given the benefit of Indian Airlines pay scales and all benefits provided for in Government instructions issued on 24.5.94.

16. The issue of merger of seniority of employees in SHOD and Indian Airlines was raised from time to time and had been a subject matter of several discussions. The Secretary, Civil Aviation, Government of India held meetings with representatives of the Management of Indian Airlines, representatives of SHOD on 10.3.98 and thereafter on 23.4.98. The Ministry had attempted to seek solutions for permanent absorption of SHOD employees in the mainstream of Indian Airlines by taking one category of employees at a time.

17. In respect of pilots, a decision was taken that the SHOD line pilots will undergo training on Indian Airlines fleet and on getting the type endorsement, they will be placed at the bottom of the seniority of First Officers (Co-pilots).

However, their past services will be counted for pay protection.

18. Similarly, in respect of Aircraft Engineers, a decision was taken that Aircraft Engineers of SHOD will undergo training on any of the Indian Airlines jet fleet as per requirement and after acquiring licence endorsement will be placed at the bottom of the seniority of Aircraft Engineer's grade in the respective trades.

19. Similarly, in respect of general category staff, it was decided that the general category staff of SHOD will be placed at the bottom of each grade in the respective Departments as on 10.3.98. Future promotions of such employees will be as per Indian Airlines Rules/Regulations. A notification dated 21.4.98 was also issued to this effect, a copy of which is annexed as Annexure-H to the counter affidavit. It was stated in the counter affidavit that Indian Airlines has a well defined recruitment policy with eligibility criteria for different direct entry levels and also promotions to various levels. On the other hand in respect of Vayudoot Ltd. there was no such detailed rules and regulations. Many of the officers of Vayudoot Ltd. who were absorbed in the SHOD of Indian Airlines did not possess the minimum laid down criteria as applicable for appointment in Indian Airlines. Hence, it was alleged that the petitioners who are the employees of Vayudoot cannot claim equality with employees of Indian Airlines.

20. It is alleged that in respect of Line Pilots and Aircraft Engineers, they would be placed at the bottom of the seniority of their cadres. In respect of general category of employees, they are to be placed at the bottom of each grade in the respective Department as on 10.3.98 and they have also accepted the seniority at the bottom of the cadre.

21. It is alleged that the employees of Vayudoot are not comparable with the employees of Indian Airlines and their absorption has been in a distinct, separate department and thus they cannot allege any discrimination. The petitioners who were employees of Vayudoot have been absorbed in SHOD which is separate entity and, therefore, cannot compare their case with employees of Indian Airlines. It is denied that there is any discrimination.

22. The Indian Airlines Officers' Association filed an application for impleadment in the writ petition. In this application, officers of Indian Airlines while opposing the two writ petitions justified placing employees of Vayudoot Ltd. at the bottom of the seniority list at the corresponding post held by them.

23. This, Court vide vide judgment dated 12.7.99 dismissed WP(C) 723/98 and WP(C) 931/98. In this judgment it was held that since there were no recruitment rules under Vayudoot Ltd. and promotions were effected on ad-hoc basis, employees of Vayudoot Ltd. could not legally claime lateral entry into the corresponding posts under Indian

Airlines and could not claim inter se seniority based on the length of service on the post held. The decision to place them at the bottom of the seniority in the post held was held valid. We agree with this view.

24. It appears that despite the dismissal of WP (C) 723/98 and WP (C) 931/98 on 12.7.99 the dispute did not come to an end and a meeting was held on 16.3.2000 in which certain decisions were reached which have been quoted in paragraph 24 of the impugned judgment. Based on the minutes of the aforesaid meeting, the Government of India issued a memo dated 6.4.2000 requesting that the exercise be completed in a time bound manner as per the decisions contained the minutes within a period of one month and compliance report furnished to the Ministry.

25. On 19.5.2000, the Government of India issued another memo directing compliance of its memo dated 6.4.2000. Air India expressed some reservations qua the implementation of the decision minuted vide minutes dated 16.3.2000. The Government of India on 13.7.2000 once again directed compliance of its memo dated 6.4.2000. Finally, on 5.2.2001, Indian Airlines issued a notification which is quoted in paragraph 39 of the impugned judgment. This notification clearly states that those officers of SHOD in the general category who are desirous of merger of their seniority as on 10.3.98 will be placed at the bottom of the respective grade/pay scales as on 10.3.98 with protection of

pay and past service. Such employees were asked to exercise their option for merger of their seniority with Indian Airlines Ltd. in the prescribed format to be submitted to the office of General Manager (Personnel) of the respective Region/Hqrs. within 30 days. In respect of employees whose option was not received within the stipulated period, it shall be presumed that he/she has not opted to remain in SHOD. Such employees shall forfeit all claims for merger with the mainstream. They will be retained in SHOD and offered time bound promotions as per their career progression. Two more notifications dated 5.2.2001 were issued which are quoted in paragraph 40 of the impugned judgment. These notifications sought various options from employees working in SHOD.

26. In Writ Petition (Civil) 1430/2001 (Vayudoot Karamchari Sangh v. Union of India and Anr.) petitioner prayed for quashing of notification dated 5.2.2001 (annexure P-8 to the writ petition) and for a mandamus directing the respondents to immediately release time bound and strength based promotions to the employees of the technical and general category staff of SHOD due from 1.1.98 and to consider the eligible employees of the technical and general category staff of SHOD for promotion/selection to the post to be filled through inter-departmental test.

27. The impugned notification dated 5.2.2001 of the Indian Airlines is as follows:-

INDIAN AIRLINES LIMITED
NORTHERN REGION

I.G.I.Airport
New Delhi-110037

Ref. DAD/R/SHOD/SEN/131
Dated: 05.2.2001

NOTIFICATION

Sub : MERGER OF SENIORITY OF SHOD EMPLOYEES IN THE NON-TECHNICAL CATEGORIES

ASSISTANT/TYPIST	- 2940-4380
ASSISTANT/TYPIST(SR.CATG.)	- 3740-5520
SUPERINTENDENT	- 3980-5820
SUPERINTENDENT (S.R.)	- 4180-6270
SR. AIRHOSTESS	- 4380-6720

Consequent to the decision taken by the Ministry of Civil Aviation to merge the seniority of SHOD employees in the mainstream of Indian Airlines Ltd. on voluntary basis, those employees of SHOD in the aforesaid categories who are desirous of merger of their seniority as on 10.3.98 with protection of their pay and past services.

In pursuance to the above, you are advised to exercise your option for merger of your seniority with Indian Airlines Ltd. in the prescribed format to be submitted to the office of the undersigned through proper channel within 30 days of this notification.

Employees in respect of whom such an option is not received within the stipulated period, it shall be presumed that he/she has opted to remain in SHOD. Such employees shall forfeit all claims for merger with mainstream. They will be retained in SHOD and offered time bound promotions as per their career progression.

Sd/-
for General Manager (Pers.)

28. In paragraph 6 to 10 of the counter affidavit of Indian Airlines details about various meetings, discussions, consultations etc. held between Indian Airlines, employees of SHOD, mainstream Indian Airlines employees etc. has been discussed in great detail and hence we are not repeating the same. However, a perusal of the said paragraph shows that detailed discussions and consultations had been held over a long period of time in which the view points of all concerned were considered. After the receipt of the minutes of the meeting dated 10.3.98 a committee was constituted by the Chairman and Managing Director, Indian Airlines consisting of Senior Officers of Indian Airlines to examine the issues relating to seniority of SHOD employees. The Committee after examining the issue in totality submitted its recommendations which was quoted in detail in para 8 of the counter affidavit. The Chairman and Managing Director of Indian Airlines approved the recommendations of the Committee and consequently the impugned Notification dated 5.2.2001 was issued by Indian Airlines Ltd. Against that notification Vayudoot Karamcharis filed a writ petition which was allowed by the learned Single Judge and Notification dated 5.2.2001 was quashed and directions were issued to Indian Airlines and Union to reframe a policy of cadre merger.

29. The present Letters Patent Appeal has been filed by the Appellant challenging the order dated 21.5.2004 passed by the learned Single Judge in W.P. (C) Nos. 848/2001, 1097/2001, 1430/2001 and 5618/2002. The learned Single Judge vide the aforesaid common order dated 21.5.2004 has set aside the decision of Indian Airlines and the Government of India to offer merger to SHOD (Short Hauls Operation Department) employees who are erstwhile employees of Vayudoot Ltd. by placing them at the bottom of the seniority list on the posts held by them below the existing employees of Indian Airlines and has quashed the Notifications dated 5.2.2001. The learned Single Judge has further directed Indian Airlines and Union of India to reframe the seniority policy of the cadre by re-assessing and determining the equation of post by taking into consideration the four guiding factors laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Chandrakant Anant Kulkarni*** 1981 (4) SCC 130.

30. From the facts of the case, it appears that the Government of India decided in May 1993 to merge Vayudoot with Indian Airlines Ltd. and instructions regarding the same were issued by the Ministry of Civil Aviation and Tourism in view of the mounting losses and outstanding liabilities of Vayudoot. There were two courses open to the Government. One was to terminate the services of the employees of Vayudoot upon closure/merger of Vayudoot

Ltd. after paying closure compensation under Section 25-FFF of the Industrial Disputes Act. The second was the humanitarian approach to absorb employees of Vayudoot with Indian Airlines and other organizations under the Ministry of Civil Aviation such as Air India, Airport Authority of India etc. The Government of India decided on humanitarian grounds to adopt the second approach.

31. The problem then arose about inter se seniority of the Vayudoot employees and Indian Airline's employees. Here again there were two views possible. Firstly, the Vayudoot employees could have been given lateral transfer in the relevant category by which their seniority in Vayudoot would be maintained even after joining Indian Airlines. The second view was that they should be placed at the bottom of seniority list i.e., below the Indian Airlines employees.

32. The Indian Airlines employees were totally opposed to the absorption of Vayudoot employees in Indian Airlines as it would naturally affect their seniority and chances of promotion. The Government of India held several high level meetings with the representatives of various groups and authorities. With regard to Pilots and Aircraft Engineers, the matter got resolved. However, there could be no settlement in these meetings, in respect of categories of general staff and technicians. Ultimately, in pursuance of the directions given by the Government of India, the Indian Airlines took a decision to place the employees in these two

categories of SHOD at the bottom of the seniority list, though with pay protection.

33. The learned Single Judge in the impugned judgment referred to the judgment of another learned Single Judge in WP(C) 723/98 and 931/98 on 12.7.90 in which the claim of Vayudoot employees of lateral entry into corresponding posts in Indian Airlines was rejected. This was because there was no recruitment rules under Vayudoot Ltd. and promotions were effected on ad-hoc basis. Hence, employees of Vayudoot Ltd. could not legally claim lateral entry into the corresponding posts under Indian Airlines and could not claim inter se seniority based on the length of service in Vayudoot Ltd. Hence, the decision to place them at the bottom of seniority was upheld. We agree with this view.

34. In our opinion, there is no illegality in the stand taken by the Government of India and Indian Airlines. On the closure of Vayudoot Ltd. its employees could have been retrenched, but a humanitarian view was taken and it was decided to absorb them in Indian Airlines. Their pay and past service was protected. In our opinion thereafter it was entirely for the authority concerned to decide whether there should be lateral entry of Vayudoot employees into Indian Airlines or whether Vayudoot employees should be placed at the bottom of the seniority list. This is an administrative decision and it is well settled that this court does not

ordinarily interfere with administrative decisions vide ***Tata Cellular v. Union of India*** (1994) 6 SCC 651. As regards lateral entry of Vayudoot employees into the Indian Airlines this would have created a lot of grievance and resentment among Indian Airline's employees as their seniority and chances of promotion would have been affected. Hence, the decision taken by the authorities cannot be said to be wholly arbitrary or irrational.

35. As regards the decision in ***State of Maharashtra v. Chandrakant Anant Kulkarni*** 1981 (4) SCC 130 in that case the Supreme Court was laying down the law relating to integration of government servants allotted to the services of the new States. In our opinion, this decision is clearly distinguishable. In the present case, there is merger of the two Airlines having comparable categories of employees. Moreover, in Chandrakant Anant Kulkarni's case (supra) it has nowhere been said that on merger of organization A with the organization B the employees of the former cannot be placed at the bottom of the seniority list in the respective grade/cadre.

36. It may be mentioned that after the merger of erstwhile Vayudoot employees into the mainstream of Indian Airlines, a total number of 5331 employees have been promoted from the merged seniority of non-technical category of Staff and officers, out of which Officers are 1928 and staff is 3403. The number of employees who did not opt for merger

of seniority and remained in SHOD is 34 out of which 12 employees have availed promotion in SHOD. Hence, reopening the entire issue of absorption of Vayudoot employees into SHOD would mean nullifying the promotion granted to the Vayudoot employees between 1994 to 2001 while in SHOD and also nullifying the promotions granted to the employees from the merged seniority of Indian Airlines.

37. The employees of SHOD have voluntarily opted to be merged into the mainstream of Indian Airlines. As a consequence, 598 out of 632 employees in the non-technical cadre of staff and all 97 officers of SHOD have been merged into the mainstream of Indian Airlines.

38. In our opinion, the learned Single Judge has failed to appreciate that the merger has been an ongoing process since 1994 and the decisions that were implemented were taken after due deliberations and consultation between the authorities, Indian Airlines employees and erstwhile Vayudoot employees. Turning back the clock at this stage would mean revoking the total absorption process of erstwhile Vayudoot into SHOD.

39. In our opinion, the Government of India and Indian Airlines have tried to strike a balance between the competing claims of Vayudoot employees and Indian Airlines employees. The policy decisions appeared to be fair and equitable to the two sets of employees. It is not proper for this Court to interfere in the administrative matters.

40. In ***V.K.Dubey and Ors. v. Union of India and Ors.*** (1997) 5 SCC 81 the appellants were employed on the diesel side of locomotives operations. Subsequently, on introduction of electrical engines they were given training and were absorbed on the electrical locomotive side. The question of inter se seniority of employees already working on the electrical locomotive side and those shifted from the diesel locomotive side to the electrical locomotive side arose for consideration.

41. In paragraph five of the judgment, the Supreme Court observed :

> "Shri Vijay Bahuguna, learned Senior Counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operate in one sector, namely, diesel locomotive sector, while elecrtrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre.

Under these circumstances, they cannot have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotives department. Under those circumstances, this Court has held that they cannot have a seniority over them."

42. In our opinion, the impugned Notification dated 5.2.2001 is an administrative and policy decision and it is not proper for this Court to interfere with an administrative and policy decision.

43. It is well settled that in policy matters this Court has a very limited scope of interference vide ***Union of India v. International Trading Co.,*** J.T. 2003 (4) SC 549 (paragraph 17), ***State of Punjab v. Ram Ludhaya***, 1998 (4) SCC 117; ***Krishnan Kakkant v. Government of Kerala*** 1997 (9) SCC 495, **G. B.** ***Mahajan v. Jalgaon Municipal Council*** AIR 1991 SC 1153 and ***Federation of Railway Officers Association v. Union of India*** 2003 (4) SCC 289.

44. In ***Union of India v. International Trading Co.*** 2003 (51) ALR 598 (vide Paragraph 17) the Supreme Court observed:

"The court as observed in G. P. Mahajan v. Jalgaon Municipal Council, AIR 1994 SC 988 are kept out of the lush field of administration policy except where the policy is inconsistent with the express or implied provision of a statute which creates the power to

which the policy relates, or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Court's view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

As Professor Wade points out (in Administrative Law by HWR Wade, 6th Edition), there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must therefore distinguish between proper course and improper abuse of power. Nor is the test the Court's own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise."

45. ***In Tamil Nadu Education Dept., Ministerial and General Subordinate Services Association v. State of Tamil Nadu and Ors.***, AIR 1980 SC 379, the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a

circular/Government Order or a policy merely because there is a variation or contradiction. The Court observed: "Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls."

46. In that decision that court also observed:-

> "Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands off policy."

47. In ***Maharashtra State Board of Secondary and High Secondary Education & Ors. V. Paritosh Bhupesh Kumarsheth***, AIR 1984 SC 1543, the Supreme Court considered the scope of judicial review in a case of policy decision and held as under-:

> "The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the Sub-ordinate regulation making body. It may be a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or

regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is even a foolish one, and that it will not really serve to effectuate the purpose of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is not scope for any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or it being is consistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

48. A similar view has been reiterated in ***Delhi Science Forum and Ors. V. Union of India and Anr.*** AIR 1996 SC 1356; ***U. P. Kattha Factories Association vs. State of U.P. & Ors.*** (1996) 2 SCC 97; and ***Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. & Ors***. (1999) 8 SCC 381.

49. In ***Netai Bag and Ors. v. State of West Bengal and Ors.*** (2000) 8 SCC 262 (Vide Paragraph 20), the Supreme Court observed:-

"The Court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or wiser or more scientific or logical."

50. The Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in ***State of Madhya Pradesh Vs. Nandlal Jaiswal*** AIR 1987 SC 251 and ***Sachindanand Pandey v. State of West Bengal*** AIR 1987 SC 1109, wherein the Court held that judicial interference with a policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide. A similar view has been reiterated in ***Union of India and Ors. vs. Dinesh Engineering Corporation and Anr.*** (2001) 8 SCC 491.

51. In ***Ugar Sugar Works Ltd. v. Delhi Administration and Ors.*** (2001) 3 SCC 635, it has been held that in exercise of their powers of judicial review, the courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify invalidating the policy.

52. In ***State of Himachal Pradesh and Anr. v. Padam Dev and Ors.*** (2202) 4 SCC 510, the Supreme Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the Constitution it cannot be a subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view, has been reiterated in ***State of Rajasthan and Ors. v. Lata Arun*** (2002) 6 SCC 252.

53. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The Court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere, vide ***Tata Cellular v. Union of India*** (1994) 6 SCC 651, ***Om Kumar v. Union of India*** 2001 (2) SCC 386. In ***U.P. Financial Corporation v. Naini Oxygen and Acetylence Gas Ltd.*** J.T. 1994 (7) SC 551 (vide Paragraph 21) the Supreme Court observed:-

> "However, we cannot lose sight of the fact that the corporation is a independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such,

in the discharge of its function it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decisions, however, more prudent, commercial or business like it may be, for the decision of the corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed by making the corporation liable."

54. In ***Haryana Financial Corporation and Anr. vs. Jagdamba Oil Mills and Anr.*** (2002) 1 UPLBEC 937

(Vide paragraph 10) the Supreme Court observed:-

"If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known that more than one choice is available to the administrative authorities. They have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". (per Lord Diplock in Secretary of State for Education and Science v. Metropolitan Borough Counsel of Tameside, 1977 AC 1014). The Court cannot substitute its judgment for the judgment of administrative authorities in such

cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, the Court can intervene. To quote the classic passage from the judgment of Lord Greene M. R. In Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 1947 (2) All ER 680:

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyer familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word unreasonable in a rather comprehensive sense. It has frequently been used and is frequently used a general discretion of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

55. In administrative matters the Court should therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary. In this connection Justice Frankfurter while Professor of Law at

Harvard University wrote in 'The Public and its Government'—

> "With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

56. In the same book Justice Frankfurter also wrote—

> "In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship."

57. In ***Keshavanand Bharathi v. State of Kerala***, AIR 1973 SC 1461 (vide paragraph 1547 Khanna J. observed:

> "In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error."

58. In ***Indian Railway Construction Co.Limited Vs. Ajay Kumar*** (2003) 2 UPLBEC 1206 (vide paragraph 14) the Supreme Court observed that there are three grounds on which administrative action is subject to control by judicial

review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in ***Council of Civil Service Unions v. Minister of the Civil Service*** 1984 (3) All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the 'Wednesbury's case' is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

59. Lord Diplock explained irrationality as follows:

a) "By irrationality I mean what can be now be succinctly referred to as Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

60. For the reasons given above these writ appeals 646-649/2004 are allowed and the impugned judgment is set aside. LPA 382/99 is dismissed.

M. Katju
CHIEF JUSTICE

Madan Lokur
MADAN B.LOKUR, J

February 8 ,2006
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